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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 03RD DAY OF APRIL 1998

BEFORE:

THE HON'BLE MR. JUSTICE H. RANGAVITTALACHAR

H.R.R.P. NUMBER 1836/1994

Between:

Mr. K.S. MANOHAR, son of
Mr. K.S. Subramaniam, Hindu,
aged about 33 years, by profession
a watch repairer, proprietor of
M/s. S.J.S. Watch Repairs, Shop
No.2, Premises No.58/1, Chinmaya
Mission Hospital Road, Lakshmi Puram,
Ulsoor, Bangalore-560008, Karnataka

. . . Petitioner

(By M/S Olakkengil Group)

And:

Mrs. R. SARASWATHI, wife of
Mr. S. Krishnaswamy Ramachandran Naidu,
Hindu, aged about 62 years, by
profession a proprietress and
land lady, proprietress of shop
No.1, Premises no.58/1, and
residing at upstairs, premises
No.58/1, Chinmaya Mission Hospital
Road, Lakshmi Puram, Ulsoor,
Bangalore-560008, Karnataka.

. . . Respondent

(By Sri M.L. Dayananda Kumar)

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This H.R.R.P. filed u/s. 50(1) of the KRC
Act against the order dt.17-10-94 passed in HRC
No.10291/89 on the file of the XV Addl. Judge,
Court of small causes, SCCM.20, Mayo hall, Bangalore
City.

This H.R.R.P. coming on for hearing this
day, the Court made the following:

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ORDER...

ORDER

This is a tenants petition under Sec.50 of the Karnataka Rent Control Act against the order of eviction passed by the learned Judge of Small Causes,Bangalore.

2. The eviction petition of the respondent/landlord has been allowed on the ground that the tenant/petitioner failed to pay the arrears of rent inspite of notice of demand under Sec.21(1)(a) of the Karnataka Rent Control Act (Herein after referred to as THE ACT). The learned counsel appearing for the tenant/petitioner firstly submitted that the learned Judge erred in holding that the notice contemplated under Sec.21(1)(a) was served on him and he committed default in non-payment of the rent. According to the him, that Ex.P.1, a notice issued by the landlord under Sec.21(1)(a) was not received by the tenant; instead the tenant received only an old news paper in the addressed cover; and not the notice calling upon him to pay the rents. This contention has been

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repelled by the learned Judge holding that the conduct of the tenant subsequent to receiving Ex.P.1 in not immediately replying to the landlord about the same betrays the said defence; He has also held, besides the burden is on him to show that he did not receive notice particularly in the light of his admission that he received ¹⁶addressed ~~the~~ postal cover. This finding cannot be faulted with as there is a presumption in law that when a properly addressed letter is posted that the letter has reached the addressee. It is for the person disputing of having received the letter to rebut the presumption by placing appropriate material before the Court, that has not been done in this case. Besides as rightly observed by the learned Judge, the conduct of the tenant in not replying to the letter, immediately "That the postal cover he received contained only a news paper" which proves that he must have received the notice of demand to pay the arrears of rent.

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3. The other contention of the tenant is that he was not due ~~of~~ any rents by way of arrears as he was paying the rents every month without default and the said fact is evidenced by a note book preserved by him in which he had made entries regarding the same. This defence of the tenant is only stated to be rejected inasmuch as in another breadth, he contends that immediately on receipt of the notice, he filed an application under Sec.19 to deposit all the arrears of rent. This conduct clearly establishes that he had not paid the monthly rents as and when it fell due even after service of notice.

5. The last contention of the learned counsel appearing for the petitioner is that he made an application under Sec.19 for permission to deposit the rents. It has to be stated that the said application is rejected and therefore under the circumstances it cannot be held that the same was valid, *lender of rents*

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6. Learned counsel submitted at this stage that during the enquiry of the petition filed by the landlord, landlord made an application under Sec.29(1) of the Karnataka Rent Control Act and the learned Judge had passed an order directing the tenant to pay all the arrears of rent which order he had complied. In view of having complied with the order under Sec.29(1), under Sec.21(1)(ii) of the Karnataka Rent Control Act, the Court should have dismissed the eviction petition. *A Similar*
~~This~~ ✓

contention is answered in the negative by a Division Bench of this Court in the case of SHIVA vs DEVANNA reported in 1982(1)KLC,78, wherein it has been held as follows:

"The three conditions mentioned in clauses (i),(ii) and (iii) of sub-section (2) of S 21 extracted above are conjunctive as held by Nesargi J, in M.R.Ananthaswamy V Puttamma and by Venkatachalaiah J in Shivanna Vs Gangamma. We are in agreement with the above view. Therefore, the first requirement for a tenant to avoid an eviction order under Section 21(1)(a) of the Act is to comply with the Section 29 which contemplates the deposit of all the arrears of rent due. That the expression "all the arrears of rent due, includes time barred arrears is concluded by the decision of the Supreme Court in K.G.U.Trust Case. Even after depositing all the arrears in terms of Section 29,

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the tenant should satisfy the court about the existence of sufficient cause for not complying with the notice issued by the landlord under Section 21(1)(a) of the Act and should also deposit any further amount found due together with interest, as directed by the Court. As pointed out earlier, the requirement of the deposit of all the arrears of rent due, under Sec.29 covers all eviction petitions filed on one or more of the grounds specified in Sec.21 of the Act. After making the deposit as required under Sec.29 of the Act while the tenant has the right to contest the eviction petition, the landlord has the right to get an order of eviction if he makes out a case on one or more grounds mentioned in clauses (b) to (p) of Section 21(1) of the Act but not under clause (a) thereof. When the petition for eviction is solely based on Section 21(1)(a) of the Act, i.e., non-payment of rent if the tenant complies with Section 29 of the Act, and shows sufficient cause for delayed payment and pays the dues to the landlord alongwith interest as provided in sub-clause (ii) and (iii) of sub-section (2) of Section 21 of the Act, there can be no order of eviction against such tenant. If in section 21(1)(a) the words 'legally recoverable' were used in the restricted sense in sub-section (2), the Legislature would not have incorporated the requirement that the tenant should comply with Section 29 to avoid an order of eviction, but would have incorporated the condition that if the tenant were to deposit the rent 'legally recoverable', no order of eviction could be made against him. Therefore, it is clear that the words 'legally recoverable' used in Sec.21(1)(a) of the Act is in the same sense and must be given the same meaning as the words 'all the arrears of rent due' used in Section 29 of the Act".

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7. In view of the Division Bench Judgment the tenant is not absolved from being evicted merely by complying with the order under Sec.29(1), he has a further responsibility to show sufficient cause for non-payment of the rent within 2 months from the date he received the notice under Sec.21(1)(a).

8. No other point has been urged. For the reasons stated above, this revision petition is liable to be dismissed and is accordingly dismissed.

9. Learned counsel appearing for the tenant prayed that the tenant is a person of meagre means and the the only source of livelihood as he is ~~the~~ business ~~he~~ is carrying on the business in "watch repair" and having regard to the difficulty in securing the alternative accommodation and the expenses involved for the same, in order to mobilise the resources for purposes of securing the alternative accommodation, he prayed for grant of 5 years time.

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10. Learned counsel appearing for the landlord opposed for grant of any time beyond 2 years.

11. Having regard to the fact that the tenant is a person of meagre means and has a large family to maintain, 3 years time is granted to the tenant to quit and deliver vacant possession to the landlord subject to the following conditions:

(a) that the tenant shall file an affidavit undertaking to voluntarily vacate the premises.

the said affidavit shall be filed within one week from today after having served a copy thereof on the landlord's counsel.

(b) that the tenant shall pay the rents regularly as and when it falls due without any default.

(c) that the tenant shall not sublet or sublease the premises.

Petition rejected.

Sd/-
JUDGE

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